

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT

SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District Eastern District of Missouri	
Name of Movant David R. Wulf		Prisoner No. 38227-044	Case No. S2-4:09CR00509 JCH
Place of Confinement Terre Haute Federal Prison Camp, Terre Haute, IN			
UNITED STATES OF AMERICA		V.	David R. Wulf (name under which convicted)
MOTION			
1. Name and location of court which entered the judgment of conviction under attack <u>United States Federal Court; The Eastern District of Missouri</u>			
2. Date of judgment of conviction <u>August 22, 2013</u>			
3. Length of sentence <u>120 months</u>			
4. Nature of offense involved (all counts) <u>Count 1: Crime of conspiracy to commit mail fraud affecting a financial institution, mail fraud, wire fraud affecting a financial institution, wire and bank fraud; Counts 2, 3, 4, 5, 6, 7, 8, 9: Bank Fraud; Counts 10, 11, 12, 13, 14: Wire fraud affecting a financial institution; Counts 15, 16, 17, 18: Wire Fraud</u>			
5. What was your plea? (Check one) (a) Not guilty <input checked="" type="checkbox"/> <input type="checkbox"/> (b) Guilty <input type="checkbox"/> <input checked="" type="checkbox"/> (c) Nolo contendere <input type="checkbox"/> <input checked="" type="checkbox"/>			
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: 			
6. If you pleaded not guilty, what kind of trial did you have? (Check one) (a) Jury <input checked="" type="checkbox"/> <input type="checkbox"/> (b) Judge only <input type="checkbox"/> <input checked="" type="checkbox"/>			
7. Did you testify at the trial? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
8. Did you appeal from the judgment of conviction? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			

9. If you did appeal, answer the following:

(a) Name of court _____

(b) Result _____

(c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes No

11. If your answer to 10 was "yes", give the following information:

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result _____

(6) Date of result _____

3) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes No

(5) Result _____

(6) Date of result _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes No
(2) Second petition, etc. Yes No

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (i) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

(4)

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant

Supporting FACTS (state *briefly* without citing cases or law): _____

- 1. Sharon Nekol Province admitted to Susan Woods that David Wulf had no part in the fraud that was committed by her and the Cassitys. Further, she admits telling prosecutors that David Wulf had no part in and no knowledge of any conspiracy to commit fraud. She also admits that she told prosecutors that she created fraudulent funeral home letters and used a David R. Wulf signature stamp on Wulf, Bates & Murphy stationary without Petitioner David Wulf's knowledge or permission (see Exhibit 12). If the prosecutors had not withheld this exculpatory information from Petitioner David Wulf and his counsel, David Wulf could not have been convicted.
- 2. Tony Lumpkin, COO of Lincoln Memorial Life Insurance Company, in a sworn statement, Exhibit 10, states he told prosecutors Petitioner David Wulf had no role and/or knowledge of the fraud committed by the Cassitys and others in this matter. Darci Greco confirms this in her sworn statement (Exhibit 11)

B. Ground two: Denial of effective assistance of counsel

Supporting FACTS (state *briefly* without citing cases or law): _____

Counsel Joe Hogan was completely ineffective as Petitioner David Wulf's attorney. Hogan did not call any witnesses, other than David Wulf. Expert witnesses would have testified that the bank trustees participated in the fraud committed by the Cassitys and others. Numerous individuals, including Tony Lumpkin, Darci Greco, Susan Woods, Charles Bates, and his ex wife, Kelly Bates, would and have sworn under oath that David Wulf did not participate in and/or have knowledge of the fraudulent activities of which he was convicted (see Exhibits 2, 2A, 6, 7, 7A, 10, 11, and 12. Further, Attorney Joe Hogan was completely ineffective in his cross examination of witnesses. Also, he failed to challenge expert bank trustee witnesses who were later proven to be anything but expert. In fact they have been proven to be completely incompetent. In this case, Attorney Joe Hogan has to be one of the most ineffective attorneys who ever practiced law. Even first year law students would have been more effective.

C. Ground three: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law) _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

None of these grounds have been presented. Failure of the prosecution to provide exculpatory evidence was not discovered until after the trial. Ineffective assistance of counsel is the other ground argued. This is the first 2255 I have filed. Therefore, I could not have presented anything under this heading previously.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes No

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Joseph Hogan & Address: 8008 Carondelet Ave, Clayton MO 63105

Ethan Corlja & Address: 5205 Hampton Ave, St. Louis MO 63109

(b) At arraignment and plea Joseph Hogan & Address: 808 Carondelet Ave, Clayton MO 63105

Ethan Corlja & Address: 5205 Hampton Ave, St. Louis MO 63109

(c) At trial Joseph Hogan & Address: 8008 Carondelet Ave, Clayton MO 63105

Ethan Corlja & Address: 5205 Hampton Ave, St. Louis MO 63109

(d) At sentencing Joseph Hogan & Address: 8008 Carondelet Ave, Clayton MO 63105

Ethan Corlja & Address: 5205 Hampton Ave, St. Louis MO 63109

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(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) Give date and length of the above sentence: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes No

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

11-5-14

(date)

Signature of Movant